

AMENDED RESPONSE TO  
Information Request SALEM 1-55

Request:

The City of Salem negotiated a permitting process with US Gen New England, which all parties agreed that US Gen New England would seek zoning relief from the DTE, while submitting to site plan review by the city of Salem. The City of Salem specifically requested that you follow this same procedure for your project. In your letter of January 19, 2004 (Exhibit 1 in your answer to the City's motion to intervene) you rejected this approach and decided to seek DTE exemption of local permitting, because of "the project's impact on the area's reliability and the opportunity for accelerated regulatory review." However, the city's review of the US Gen New England's far larger and more complicated proposal was completed and a favorable decision granted in less than four (4) months, while DTE continue to review that matter. In addition, NEP recently requested zoning relief from Salem's zoning Board of Appeals (ZBA) on an unrelated Automation Project at the same site, which was granted after just one meeting and a total of 10 minutes of presentation, comment and deliberation. Considering that, why do you believe that seeking local zoning relief and site plan review approval could not be done in a reasonable time frame? Why do you believe you must instead exempt yourself from local permitting processes?

Response:

The City's Information Request 1-55 fails to mention the four months of discussions on NEP's building permit application for the automation project, as well as discussions with the Planning Department on zoning and site plan review issues, that ultimately led to the "10 minute" ZBA decision on that project. The prolonged nature of that permitting process supports the Company's belief that the capacitor bank project which is the subject of this proceeding could be drawn out in local proceedings. Chapter 40A, Section 3 of the state's Zoning Act provides a clear-cut right and general procedures for public service corporations to seek and obtain exemptions from local zoning (including Site Plan Review) through formal legal proceedings conducted by the Department. Public service corporations are the only industry entitled to this exemption. Like other safe harbors (e.g., exemptions from state and local electric codes), the exemption reflects the Legislature's interest in promoting a state-wide scheme for utilities, which results in relatively comparable service in all communities. In the case of this project, the exemption also provides a clear path for appeal, if needed.

AMENDED RESPONSE TO  
Information Request SALEM 1-55 (continued)

Response continued

Under the current construction of state law, an appeal of a Site Plan Review approval that is not tied to a special permit approval under a local zoning code can only be lodged once an associated building permit is issued. However, the project which is the subject of this proceeding does not require a building permit. Accordingly, the Company was faced with the possibility of no reasonable recourse in the event that it or an aggrieved party wished to appeal a Site Plan Review approval. Lodging an appeal would first require the airing of due process and procedural issues prior to a hearing on the merits of the decision. On the other hand, the procedure available under Chapter 40A, Section 3 would allow an appeal of a Department Order to go directly to the Supreme Judicial Court. On balance, all the factors described here, plus the Company's obligation to provide reliable service to customers and the City's expressed attitude toward the proposed project, weighed in favor of exercising the Company's statutory rights to seek a zoning exemption at the state level. Please note that the Company discussed this approach with the City Planner, invited the City to participate in the instant proceeding and did not oppose the City's intervention.

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